DEVELOPMENT & COMMERCIAL BANK BERHAD

v.

KREDIN SDN. BHD.

HIGH COURT, KUALA LUMPUR
DATO' V.C. GEORGE J.
[CIVIL SUIT NO. D2-23-215-88]
19 SEPTEMBER 1992

PRACTICE AND PROCEDURE: Application to set-aside Summary Judgment - Summary Judgment obtained in default of appearance - Delay in filing application - Plaintiff's delay in filing application under O. 18 r. 19 - Whether there was any arguments on merits.

By a letter of 28 October 1982, the plaintiff bank had offered a term loan of RM15.7 million to the defendant. Owing to the defendant's default the plaintiff caused the writ to be issued. The defendant filed their statement of defence dated 29 April 1988, and served it on or about 30 April 1988. But it was not until 22 December 1988, that the plaintiff took out their O. 18 r. 19 application to have paragraphs 3 and 4 of the statement of defence struck out and for summary judgment to be entered for the amount prayed in the statement of claim.

Owing to the absence of the defendant and their solicitors judgment-in-default was recorded against the defendant on 14 April 1989. The defendant through their solicitors have filed, 3 years later, their application to set it aside.

Issues:

(i) Whether the court has the power to set-aside the summary judgment entered on the hearing of an O. 18 r. 19 application where the defendant had failed to appear.
(ii) Whether the defendant has provided an acceptable explanation as to the delay of some 3 years in taking out the application.
(iii) Whether the plaintiff's delay in taking out the action can be used to neutralise the delay by the defendant in applying to set-aside the judgment.
(iv) Whether the defendant's lines of argument were meritorious.

Held:

[1] There was no specific rule that allows the court to set-aside judgments entered in default of appearance on the hearing of a O. 18 r. 19 application. The only rule dealing with setting aside judgments irregularly entered is O. 2 r. 1(2) but the rule was not relevant here as there was no suggestion being made that the order was irregular.

[2] The defendants have failed to provide the court with any acceptable explanation for the inordinate delay of some 3 years in doing something in respect of the judgment that was entered against them in the absence of the defendants and their legal advisers.

[3] The delay in the plaintiff taking out the action cannot be used as the Counsel sought to do; to neutralise, as it were, the delay by the defendants in applying to set aside the judgment. The *quid pro quo* argument has no merit.

[4] The proposed line of argument advanced against the application for summary judgment was without merit.

[Defendant's application dismissed with costs].

Cases referred to:

Nouvan Mont Dor (M) Sdn. Bhd. v. Faber Dvpt. Sdn. Bhd. [1984] 2 MLJ 268 / [1985] 1 CLJ 56 ***(cit)***
Hipparion (M) Sdn. Bhd. v. Chung Khiaw Bank Ltd. [1989] 2 MLJ 149 / [1989] 2 CLJ 101 ***(cit)***
Hughes v. Pump House Hotel Co. [1902] 2 KB 190 ***(refd)***
Comfort v. Betts [1891] 1 Q B 737 ***(refd)***
Mohd. Isa v. Haji Ibrahim [1968] 1 MLJ 186 ***(refd)***

Legislation referred to:

Rules of the High Court, O. 2 r. 1(2), O. 2 r. 2(1), O. 14 r. 11, O. 18 r. 19, O. 35 r. 2(1)
National Land Code 1965

For the plaintiff - N. Chandran; M/s. Adnan Sundra & Low
For the defendant - R. Rajasingham, Kanawagi with him; M/s. Jayaraman Ong & Co.

JUDGMENT

V.C. George J:

This is an application by the defendant (Kredin) to have set aside the summary judgment that was entered against it on the 14 April 1989 in the absence of the defendant and/or its solicitors at the hearing of an O. 18 r. 19 application that had been taken out by the plaintiffs.

By a letter of 28 October 1982 the plaintiff bank had offered, subject to the terms and conditions set out therein, a term loan of RM15.7 million to the defendants. The purpose of the loan was stated to be, as to RM5.7 million, to

redeem certain property that had been charged to Central Malaysian Finance Bhd. and as to the balance of RM10 million, to make the initial payment in respect of the purchase by Kredin of three lots of land. The security to be provided for the loan was stated to be a first legal charge of the land to be redeemed by the said payment of the RM5.7 million, an assignment of the purchase agreement in respect of the purchase by Kredin of the said three lots, and the personal guarantees of one Datuk Mohd. Salleh Yusof and one Mr. Jayaraman. Interest payable was 15% per annum on yearly rests. Late payment was to attract additional interest at 3% above the said 15%.

Kredin signified acceptance of the said loan offer by having an endorsement to that effect made on the letter. That endorsement was dated 29 October 1982 on which date the plaintiffs and Kredin entered into a written loan agreement in respect of the said offer that had been accepted by Kredin. *Inter alia* the written agreement reiterated all the terms of the said offer and acceptance and in particular it is to be noted that it provides that the loan is for RM15.7 million of which RM5.7 million is to be utilised to redeem the land held under State Lease 4385 lot 17696 Mukim & District of Klang "which land is to be charged to the Bank (that is, the plaintiffs herein) ... as additional security for the term loan." It was provided that "the bank shall disburse the whole of the term loan after the execution of this agreement and other securities ..."

However the bank did not wait for the execution of the agreement and the security documents but had by their solicitors' letter of the 28 October 1982 sent RM5.7 million to Central Malaysian Finance Bhd. to effect redemption of the said land held under the said lease 4385 for the said lot 17696 Mukim & District of Klang. The land having been redeemed was purportedly pursuant to the terms of the loan agreement, charged to the plaintiff bank as a first legal charge to secure the loan to Kredin.

I pause to note that although it was clear beyond any reasonable doubt, in fact as clear as anything could be clear, that the RM5.7 million that had been disbursed was part of the RM15.7 million loan, Junior Counsel for the defendants spent a substantial amount of precious judicial time in his submission that that RM5.7 million was not to be treated as part of the loan amount because it was disbursed before the loan agreement had been executed and before the security documents had been executed. He extended the argument to include the RM10 million that was disbursed on 29 October 1982 on the ground that the first legal charge on the land that had been redeemed by the payment of the RM5.7 million was only executed one day later on 30 October 1982. It was submitted that these contentions provided a ground on which the summary judgment sought should not have been granted.

Section 2.03 of the agreement that "The bank shall disburse the whole of the term loan after the execution of this agreement and other securities ..." has the effect that the borrower cannot insist on such disbursement until after the execution of those documents. It does not have the effect of precluding the bank from disbursing the amount prior to the execution of those documents if it chooses to do so. In fact the proviso to section 2.03 states as such:

> Provided however that the bank may at its absolute discretion without prejudice to any of its rights hereunder and at the request of the borrower disburse the term loan or any part thereof at any time prior to or without compliance by the borrower of any or all of the covenants terms and or conditions contained in this agreement and all sums so disbursed shall be deemed to be secured by this agreement.

That this was the position appears to have been accepted by Kredin's representative, its director Mr. Jayaraman. In his affidavit enclosure (27) in support of the application before me, he does not make an issue in respect of the full disbursement of the agreed RM15.7 million. In paragraph 16 he says, "... such RM15.7 million of the full loan was disbursed as following ..." and he gives full details of the actual disbursement on 28 October 1982 of the RM5.7 million and the further RM10 million and even reproduces the contents of the letters with which the cheques were sent and ends that part of his affidavit by stating in paragraph 18, "The full and complete disbursements of the said loan were for the above purposes." It is to be reiterated that references in his affidavit to the RM5.7 million and the RM10 million were express references to the disbursements made respectively on 28 and 29 October 1982.

The security documents agreed to be given were given, namely, a first legal charge on the land that had been redeemed by the payment of the RM5.7 million, an assignment of the sale and purchase agreement of the three lots of land in favour of the bank and the guarantees. The guarantees were given not in one joint and several guarantee but by a separate letter of guarantee by each of the two guarantors.

Although the duration of the loan was stated to be three months, there was no evidence of any demand for repayment until 31 January 1984. Although the demand of that date was not met, it was not until 23 January 1988 that the writ herein was caused to be issued by which RM33,995,372.36 being the RM15.7 million and accrued interest thereon computed up to 1 August 1987 together with further interest at 12.5% per annum on yearly rests until full settlement, was claimed. Full particulars of the manner in which the computation of interest was effected is shown in the statement of claim. There was also a prayer for costs.

The statement of defence dated 29 April 1988 was filed and served on or about 30 April 1988. But it was not until 22 December 1988 that the plaintiffs took out their O. 18 r. 19 application to have paragraphs 3 and 4 of the statement of defence struck out and for summary judgment to be entered for the amount prayed in the statement of claim.

By the statement of defence the defendants deny that the RM33,995,372.36 is the sum due and owing and put the plaintiffs to strict proof. It is to be noted that in effect the defendants were not denying that something was owing but that it was not the RM33,995,372.36. The defendants say that the interest charged was excessive and penal in nature. They go on to plead that "in any event (the interest claimed) is not tenable in law" but give no reason for the contention. It is admitted that a demand was sent. The point was then made that negligently separate and not a joint and several guarantee were accepted and the defendants go on to contend that because of this the plaintiffs are liable to the defendants "in a gross claim for damages. No explanation or the basis for this astonishing contention was provided and not surprisingly Counsel for the defendants did not, before me, dwell on this contention.

By paragraph 3.6 of the statement of defence the defendants contend that it was a strict basis of the loan that in the event the defendants were unable to repay the amount owing, the securities to be taken by the plaintiffs would be more than adequate "to settle and offset any outstanding" in respect of the said loan. Counsel before me said that what was intended to be meant by this was that the plaintiffs were required to look to the securities for the amount outstanding and not to the defendants. The defendants go on to point out that the plaintiffs had obtained an order for sale of the land charged to the plaintiffs. I pause to note that it is not alleged that a sale of the lands took place. By paragraph 3.10 the defendants say that "the plaintiff at no point of time since 1984 expressed or evinced any intention to pursue any remedies or recourse, if at all, against the defendants for any alleged out-standings" and went on to state that "therefore the plaintiffs have in fact waived, remitted and/or disposed with their rights against the defendant, if at all, having elected to seek their sole recourse against the charged properties. And then the statement of defence stated "wherefore ... the action ... is untenable in law". It is further contended that the action is *mala fide* in that there was non-disclosure of the foreclosure proceedings and with that, apart from some repetitions of what had been stated earlier in the defence the defendants end the statement of defence by joining issue with the plaintiffs on all averments made.

As has been seen, the O. 18 r. 19 application was only filed on 22 December 1988 that is, almost eight months after the defence was filed. The application was fixed for 17 March 1989. It was served on the defendants. They wanted an adjournment on the ground that one Mr. Devan of Counsel who had had conduct of the case had abruptly left the defendants' solicitors' firm and another counsel had to be briefed. Apparently the plaintiffs' Counsel did not object to the application for adjournment that was made by Counsel on behalf of the defendants and in any event the application was adjourned to be heard on 14 April 1989.

On 11 April 1989 the defendants' solicitors sent their letter of that date to the Senior Assistant Registrar received by the Registry on 13 April 1989 seeking a further adjournment on the same grounds that had been the basis of the earlier application. The plaintiffs' solicitors' views were not sought but a copy of the letter to the Senior Assistant Registrar was

extended to them. Apparently the application was called up for disposal at about 10.35 a.m. The defendants were absent and were not represented by counsel. Counsel for the plaintiffs objected to any further adjournment of the application. The Senior Assistant Registrar (who had not replied the letter of 11 April) proceeded to hear and dispose of the matter. An order in terms of the application was made and by a letter dated 14 April 1989 the plaintiffs' solicitors informed the defendants' solicitors as to what had transpired. The letter went on to state "we will be forwarding you the draft of the order and the judgment for your approval shortly. We however thought that we had a duty to inform you of the proceedings this morning on an urgent basis." This was clearly an invitation, as it were, to the defendants' solicitors to take out such proceedings if any was available in respect of the order that had been made in the absence of the defendants and/or their solicitors. However, apparently nothing was done by the defendants or their solicitors in respect of the judgment that had been entered against the defendants on 14 April 1989 until 3 June 1992 when the instant application encl. (27) was filed designated to be heard by the Judge in Chambers seeking to have the judgment given by the Registrar set aside.

I pause to note that the provision under the rules that this application is sought to be made has not been disclosed to the court. There is no general rule that allows the setting aside of judgments that had been entered against a defendant in his or its absence. In fact the general rule is that on perfection of the order given, the Judge or Registrar that made the order becomes *functious officio* vis-a-vis the summons, petition, motion or trial in which the order was made unless the order has a liberty to apply provision in which case within the confines of the liberty reserved the Judge or Registrar could further deal with the matter. However, there are certain specific rules that deal with the specific situations that allow the Court that made an order, made in the absence of a party, to set it aside. For example, for a judgment in respect of an O. 14 application there is O. 14 r. 11 and at the trial of the action there is O. 35 r. 2(1). There are similarly specific rules that allow the Court to set aside judgments entered in default of appearance (O. 13 r. 8) and default of defence (O. 19 r. 9). However, there does not appear to be any such specific rule in respect of a summary judgment entered on the hearing of an O. 18 r. 19 application where the defendant had failed to appear. The only other rule dealing with setting aside orders is O. 2 r. 1(2). That is a general rule dealing with judgments irregularly entered but that rule is not relevant here as there is no suggestion being made that the order was irregular. However as no objection to the procedure adopted of making the application to a Judge (as opposed to applying to the Registrar who made the order or going to the Judge by way of appeal) has been taken I will, although I have doubts about it being the correct procedure, assume for the purposes of this case and for this case only that the procedure adopted is correct.

The next hurdle that the defendants have to cross is to provide the Court with an acceptable explanation as to the delay of some three years in taking out the application. It is to be noted that even if the judgment was an irregular one the application to set it aside has to be made within a reasonable time - see O. 2 r. 2(1). What is advanced as an explanation for the delay in the affidavit in support of the application appears to be that the plaintiffs were aware that the judgment was bad in law, that there had been without prejudice discussions and that the sealed copy of the judgment had not been served on the defendants or their solicitors.

The defendants can be said to be justified in ignoring a judgment that was void. However here the defendants do not even suggest that the judgment is irregular. Presumably because the discussions were without prejudice discussions what was discussed has not been disclosed to the Court. If the Court has to be kept in the dark, such alleged discussions, the nature of which not having been disclosed to the Court, cannot provide an explanation for the delay. The non-service of the sealed copy of the order does not provide an explanation in the face of the fact that the defendants' solicitors were by letter made aware of the fact of the judgment almost as soon as it was entered.

Before me, Counsel for the defendants in dealing with the three years delay, drew my attention to the fact that the plaintiffs had delayed causing the writ to issue and that the plaintiffs had delayed taking out the O. 18 r. 19 application for some eight months. The plaintiffs have

by affidavit explained the eight months delay. That there was a petition to wind up the defendants and that accordingly it was thought unnecessary to proceed to obtain judgment and that when it was found that the petitioners had problems about pursuing with the petition (at one stage apparently the defendants had even obtained an injunction restraining the petitioners from pursuing with the petition) the plaintiffs decided that they may have to apply to be substituted as petitioner and hence thought it advisable to try to obtain summary judgment is, in my judgment, an acceptable explanation for the eight months delay. Even if it was not, that was a matter for the Senior Assistant Registrar who heard the application and I have to point out that what is before me is not an appeal from the Senior Assistant Registrar's decision. In any event, that delay and the delay in the plaintiffs taking out the action cannot be used, as Counsel has sought to do, to neutralise, as it were, the delay by the defendants in applying to set aside the judgment. The *quid pro quo* argument has no merit.

In my judgment, the defendants have failed to cross the hurdle. They have failed to provide the court with any acceptable explanation for the inordinate delay of some three years in doing something in respect of the judgment that was entered against them in the absence of the defendants and their legal advisers.

For the defendants, it was stated that if Counsel had attended the hearing or if the defendants are given an opportunity of opposing the O. 18 r. 19 application they would have relied or would rely on two lines of argument, the first of which being the argument that had been advanced by Junior Counsel that in fact the amount said to have been disbursed pursuant to the loan agreement had not been disbursed. That has been dealt with earlier in the judgment and found to be without any merit.

The other line that was proposed to be taken was that in Counsel's submission the said assignment of the sale and purchase agreement of the three lots of land had the effect of superceding the loan agreement. The assignment, it was contended, was an absolute assignment and because it was absolute was not by way of charge only and because of that it superceded or replaced the loan agreement. Counsel conceded that there was no express provision to that effect. It was also contended that the effect of the fact of the assignment was that the bank had agreed that the first recourse for repayment of the loan will be on the securities provided that is, the third party charge and the assignment. Counsel in fact startlingly went on to contend that by virtue of the fact of the assignment the loan agreement became void.

It was also contended by Counsel that because of the assignment the bank was obliged to pay the balance of the purchase price of some RM42 million to the vendor and because it had not done so when it fell due, the defendants had a claim against the bank in damages.

For the alleged effect of the assignment reliance was placed on *Nouvau Mont Dor (M) Sdn. Bhd. v. Faber Development Sdn. Bhd.* [1984] 2 MLJ 268 and on *Hipparion (M) Sdn. Bhd. v. Chung Khiaw Bank Ltd.* [1989] 2 MLJ 149.

These two cases do not support the submission. In *Nouvau Mont Dor (M) Sdn. Bhd.* the party who had absolutely assigned all his right, title and interest in an agreement sought to sue on the agreement. An objection taken as to the assignor's right to sue in his own name was upheld and the appeal against that ruling was dismissed by the Federal Court on the ground that having absolutely assigned away all his right, title and interest in the agreement the assignor was not competent to maintain the action in his name. The Federal Court also held that whether the assignment *per se* is absolute or only by way of a charge has to be gathered from the four corners of the instrument itself.

In *Hipparion* the issue was nothing more than whether the assignment was absolute or by way of charge only and as such not absolute. The *Nouvau Mont Dor (M) Sdn. Bhd.* judgment was followed, the Supreme Court holding that whether it was absolute or only by way of a charge, had to be gathered from the instrument itself.

Neither of those two cases hold expressly or even by implication that *per se* because there was an absolute assignment the loan agreement pursuant to which the assignment was effected is superceded or is cancelled or that the loan agreement becomes void, or that because there is an absolute assignment the lender has to seek its recourse from the property the subject of the assignment. Further, there is nothing in the loan agreement or in the

deed of assignment or anywhere else anything express or implied that supports the contention made on behalf of the defendants. In the instant case, as far as the loan agreement goes, it expressly provides for the borrower to provide not in settlement or discharge of the loan but by way of security, the third party charge, the assignment and the guarantees. The deed of assignment itself reiterates that the assignment was "to secure a term loan of RM15.7 million." It does not provide that it is in settlement of the loan or any part thereof.

It would seem to me that in this the second line of argument what was overlooked was that an absolute assignment of a debt (not by way of a charge only) can be provided as a security for repayment of a loan. In that situation, even if there were no express terms that provide for a reassignment on redemption, equity would imply a right to reassignment - See *Hughes v. Pump House Hotel Co.* [1902] 2 KB 190 followed in *Nouvau Mont Dor (M) Sdn. Bhd.* At p. 195 of the report in *Hughes v. Pump House Co.* a reference was made with approval to *Comfort v. Betts* [1891] 1 QB 737 where it had been argued that because the assignment was in favour of a trustee in trust for the benefit of creditors it was not an absolute assignment. It was however pointed out in answer "that by the terms of the instrument creating the trust the whole interest of the assignors was intended to be conveyed to the assignee and the subsequent creation of the trust did not derogate from the absolute character of that assignment." Contrary to what was submitted by Counsel, *Nouvau Mont Dor (M) Sdn. Bhd.* does not hold that the loan agreement ceases to be of any effect. What it holds is that whether an assignment is absolute or only by way of charge has to be gathered from all the terms of the deed of assignment and should be gathered within the deed's four corners. But that is not to say that other documents cannot be looked at to see whether the absolute assignment (not by way of charge only) in fact was to be held by way of security.

At p. 271F the judgment reads,

> If the assignment was an absolute one (not purporting to be by way of charge only) the fact that it had the effect of passing to the assignee the rights title and interest of the assignor in the sale agreement by way of security only did not derogate from the absolute character of that assignment [*Hughes v. Pump House Hotel Co. (supra)* and *Comfort v. Betts (supra)*].

I am constrained to point out that the concept is not novel or unusual. There have always been equitable mortgages and from time immemorial there has been the practice of "jual-janji" in various parts of the country by which the owner of land on the face of the memorandum of transfer, transfers it absolutely to another but in reality in consideration of a loan given by the transferee with an undertaking that on repayment of the loan the land would be re-transferred to the original owner borrower. For a jual-janji case from Kedah see *Mohd. Isa vs. Haji Ibrahim* [1968] 1 MLJ 186 where land was transferred pursuant to the provisions of the Kedah Land Enactment. On the face of the documents filed at the land office the transaction was an out-right sale of land for $2,000. Contemporaneously with the registration of the land in favour of the "buyer" was an agreement which evidenced that in fact the consideration for the transfer was a loan of $900 on repayment of which there would be a re-transfer of the land. For purposes of registration of the transfer the registering authority looks only at the four corners of the memorandum of transfer and registers an absolute transfer. However for the back-ground, circumstances and terms for the transferor transferring the ownership in the land, the jual-janji agreement can and has to be looked at.

The position then is this that for the purposes of deciding whether an assignment is absolute and not by way of charge only it is not permissible to look outside the four corners of the deed. Within the four corners, all the terms of the deed have to be looked at. This is of course in accordance with the normal canons of construction and no doubt other rules of construction, where applicable, can be invoked e.g if there is an ambiguity, external aids, extraneous matters, may in the circumstances be looked at to arrive at the true intention of the parties.

However, having construed the meaning and effect of the deed of assignment, there is no prohibition against looking at the circumstances in which the deed came to be drafted and executed. Where, as was the case here, it was pursuant to the terms of a loan agreement that the deed was provided, the loan agreement can be looked into, for example, to decide whether the instrument by which there was the absolute passing of interest in the chose in action, was provided to the lender to be held by way of

security, whether a trust had been created or whether and when there could be a redemption of the security and so on. The deed of assignment and for that matter the National Land Code charge and the guarantees each has to be looked at *per se* within each document's four corners as to the effect of each of them. However, for the circumstance and the basis on which they came to be created, the loan agreement pursuant to which the documents were created can and should be looked into. That did not, as was succinctly stated in *Nouvau Mont Dor*, derogate from the absolute character of the assignment or make inroads into the effect of the National Land Code Charge or the guarantees.

Accordingly I have to hold that the second line of argument is equally without merit.

I pause to note that the indemnity clause in the deed of assignment appears to put paid to the defendants' contention that there was an obligation on the part of the assignee to pay off what was owing on the sale and purchase agreement. It would appear that by the terms of the deed of assignment it was the intention of the parties that it was for the assignor to pay off the balance of the agreed purchase price and further it was expressly provided that upon such payment being effected the assignor would have the lands transferred into its name and thereafter have it charged (presumably under the provisions of the National Land Code) in favour of the assignor whereupon the assignment "shall have no further force or effect."

On the ground that the defendants have not provided any acceptable explanation for the inordinate delay in taking out their application to set aside the judgment entered on the 14 April 1989, and that in any event the proposed lines of argument to be advanced against the application for summary judgment are without any merit, the application enclosure (27) in the court file is dismissed with costs.

PARASURAMAN A/L KUPPAN

v.

SAZALI BIN AKHIR & ANOR.

HIGH COURT, ALOR SETAR
DATO' K.C. VOHRAH J.
[CIVIL APPEAL NO. 12-43-1991]
30 DECEMBER 1992

PRACTICE & PROCEDURE: Application for extension of time to file Memorandum & Record of Appeal - Principles applicable - Order 49 Subordinate Court Rules 1980 - Order 55 Rules of the High Court 1980.

The appellant being dissatisfied with the decision of the learned Judge of the Sessions Court, filed a Notice of Appeal against the said decision. The Registrar of the Court notified the solicitors of the appellant, by letter that the grounds of judgment were ready and requesting for certain sums of money to be deposited in the Court as security for costs of the appeal. After a month the Registrar sent another letter stating that the Court deemed the appeal as withdrawn since the appellant had failed to lodge any money as security for the costs of the appeal.

The appellant then made an application to the High Court for extension of the statutory period within which to file his record and memorandum of appeal and for the extension of the statutory period within which to lodge the deposit in the Sessions Court for security of the costs of the appeal.

The question before the Court was whether the appellant had received a proper notification as prescribed under Form 141, Subordinate Courts Rules 1980 (SCR) read with O. 49 r. 2(4).

Held:

[1] A copy of the notes of evidence and grounds of judgment must be ready before notification under Form 141 is sent out by the Court. The Court appealed from would have to have the notes of evidence already typed, corrected and certified and the grounds of decision of the judicial officer against whose decision the appeal was lodged already ready. The Registrar of the Court appealed from must comply strictly with O. 49 r. 2(4) SCR 1980.

[2] The notes of evidence were not ready before 21 December 1991, the date in the letter of notification sent by the Registrar of the